IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 24528 of 2004

Between:

S. Samuel Prasad, S/o late Krupanandam,

working as Deputy Commissioner of Income Tax,

Visakhapatnam

..... PETITIONER

AND

1. The Union of India rep by Under Secretary to Government of India, Ministry of Finance, New Delhi

2. The Central Board of Directories, represented by its Under Secretary, Ministry of Finance, North Block, New Delhi.(R.2 is impleaded as per Court Orders dated 21.3.2005).

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction particularly one in the nature of Writ of Certiorari calling for the judgment pertaining to OA No. 1259 of 2004 dated 6/12/2004 on the file of the Central Administrative Tribunal, Hyderabad and quash the same and consequently direct the respondent to consider the case of the petitioner for promotion to the post of Joint Commissioner of Income Tax without reference to pendency of disciplinary proceedings by opening the Sealed cover and order for his promotion and pass such other order.

Counsel for the Petitioner:MR.Y.S.VENKATA RAO

Counsel for the Respondent No.1: Smt.C.VANI REDDY
Counsel for the respondent No.2: Sri B.Narasimha Sharma.

The Court made the following :

O R D E R: (per GB, J)

The Writ Petition is filed assailing the Order dated 6.12.2004 passed by the Central Administrative Tribunal, Hyderabad in O.A.No.1259 of 2004.

2) The petitioner is claiming the promotion to the post of Joint Commissioner of Income Tax but however, that is being sought to be thwarted by the Department on one ground or the other.

3) The petitioner was issued a charge memo dated 22.11.2002 alleging certain mis-conducts relating to 1993, nearly nine years prior to the date of issuance of charge memo. However, an enquiry was conducted and ultimately, the enquiry officer exonerated the petitioner of all the charges by his report dated 10.9.2003. Thereafter, the disciplinary authority disagreed to one of the findings of the enquiry officer and issued a show cause notice for imposition of minor penalty, by order dated 26.7.2004, to which the petitioner submitted explanation dated 16.8.2004. But however, no final orders have been passed. Meanwhile, the grievance of the petitioner is that three DPCs took place in January 2003, September 2003 and March 2005 respectively and his case for promotion is being passed over on the ground of pending of departmental proceedings.

4) The petitioner's case was not considered on the ground that finally orders are yet to be passed, therefore, he approached the Tribunal for appropriate relief. The Tribunal, having regard to the facts and circumstances of the case and after hearing the parties, disposed of the application at the admission stage directing the disciplinary authority to take the disciplinary proceedings to its final logical end within a period of three months from the date of receipt of a copy of the order and to open the sealed cover in respect of the applicant depending on the fate of the disciplinary proceedings. Aggrieved by the said order, the present Writ Petition has been filed.

5) The learned counsel for the petitioner submits that the order of the Tribunal is not sustainable inasmuch as the petitioner was unduly denied the promotion. Even narrating the consequence of events he further submits that the charge sheet was issued after lapse of nine years of the alleged incident and petitioner was exonerated of the charge by the enquiry officer, but yet the disciplinary authority, with an intention to prolong the agony of the petitioner again disagreed to one of the charges and issued show-cause notice for imposition of minor punishment and thus, he submits that the entire proceedings are kept pending with an intention to deny the promotion. The learned counsel alternatively also submit that even if any punishment is imposed subject to his right of challenge that the punishment if any awarded could be carried out in the promoted post and thereby no prejudice will be caused to the Department in any manner.

6) On the other hand, the learned counsel for the respondent requested that since the time granted by the Tribunal is very limited and the matter has to pass through various stages, he submits that some more time may be granted to complete the disciplinary enquiry proceedings. Till such time, the case of the petitioner could not be considered in view of the obstacle under the rules. Therefore, the order of the Tribunal cannot be found fault with.

7) We have heard both the parties. It is not in the dispute that the petitioner's case was being continued for number of years even though the misconduct

related to 1993. Be that as it may, the sealed cover procedure has been adopted in respect of DPC, which took place in January 2003, and the same has not been released on account of the pendency of the disciplinary proceedings for imposition of minor penalty. Having considered the merit of the case and having noted that the Department has not been vigilant in initiating the proceedings at the appropriate time, the petitioner should not be allowed to suffer his rightful promotion, if he is eligible under the rules. Even otherwise also, the department will not suffer in any way if the punishment is imposed that too minor punishment that could be served by the petitioner in the promoted post.

8) Under these circumstances, we find that the order of the Tribunal directing the department to complete the disciplinary proceedings and thereafter consider the case of the petitioner is not sustainable and accordingly it is set aside. The respondents are directed to open the sealed cover and if the petitioner is found to be fit for promotion, he shall be promoted forthwith subject to the minor punishment that may be awarded by the authority reserving the liberty to the petitioner to challenge the same, if he is so chooses. These direction shall be carried out within a period of six weeks from the date of receipt of a copy of this Order.

9) The Writ Petition is accordingly disposed of. No order as to costs.

G. BIKSHAPATHY, J

P.S. NARAYANA, J

12th April 2005.

Note:

Issue C.C. in one week.

B/o

BCS/BCJ

// TRUE COPY //

SECTION OFFICER

To

1. The Under Secretary to Government of India,, represented by the Union of India Ministry of Finance, New Delhi.
2. The Under Secretary, represented by its the Central Board of Directories, Ministry of Finance, New Delhi.
3. The Registrar, Central Administrative Tribunal, Hyderabad.
4. 2 CD copies

5. 1 CC to MR.Y.S. VENKATA RAO, Learned counsel for the petitioner.